





The Town of Fenwick Island

800 Coastal Highway
Fenwick Island DE 19944-4409

WWW.fenwickisland.delaware.gov
PH 302.539.3011 FAX 302.539.1305

Regular Meeting of the Town Council
The Town of Fenwick Island
January 22, 2010 @3:30 PM
AGENDA

1. Flag Salute and Call to Order
2. Presentation – DNREC Division of Soil & Water Conservation, Tony Pratt and Maria Sadler
3. Topics for Discussion and Possible Action
 - a. Resolution #41-2010 Addendum to Fee Schedule
 - b. Purchase of Speed Signs – Gardner Bunting
4. Approval of Minutes from December 11, 2009 Regular Council Meeting.
5. Treasurer's Report: Council Member Bunting
6. 2009-10 Mid-year Budget Review - Win Abbott
7. Town Manager's Report – Win Abbott
8. Department Reports: Beach, Building, Public Works and Police Department
9. Committee Reports: Beach, Environmental
10. Planning Commission: Winnie Lewis
11. Charter and Ordinance: Council Member Weistling
 - a. Proposed First Reading Chapter 95 Hazardous Materials
 - b. Proposed First Reading Chapter 102 Lighting
12. Old Business
13. Public participation
14. President's Report
15. Upcoming Events and Meetings
 - a. February 2 C&O Committee – 9:30 AM
 - b. February 9 Environmental Committee – 10:30 AM
 - c. February 9 Cultural & Historic Preservation Subcommittee – 1:30 PM
 - d. February 9 Planning Commission – 2:30 PM
 - e. February 15 Presidents Day Holiday – Town Hall Closed for Regular Business
 - f. February 26 Regular Council Meeting – 3:30 PM
16. Adjournment

This agenda is subject to change to include the deletion of items and the addition of items, including Executive Sessions, which arise at the time of the meeting.

Posted: January 11, 2010; Revised January 19, 2010 addition of item (b) Purchase of Speeds Signs



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NOTICE

**Resolution #41-2010
Addendum to Fee Schedule**

**On January 22, 2010 The Fenwick Island Town Council
Passed the Following Addendum to Resolution #38-2009
Fee Schedule**

O - OTHER FEES

(1) Beach Bonfire Permit - \$25 & \$100

Attest: _____
Agnes D. DiPietrantonio, Town Clerk

Audrey Serio, President of Council

Diane B. Tingle, Council Secretary

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed with the noted exception by the President and Council at a meeting on January 22, 2010, at which a quorum was present and voting throughout and the same is still in force and effect.

Date

Diane B. Tingle, Council Secretary

Minutes of the December 11, 2009 Regular Council Meeting

DRAFT

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Serio, Bunting, Carmean, Langan, Smallwood, Tingle and Weistling.

Topics for Discussion and Possible Action:

None

Approval of Minutes:

Motion to Approve the Minutes of October 23, 2009 Meeting: Council member Weistling

Second: Council member Carmean

DISCUSSION

Council member Weistling requested the following changes to the minutes:

- 1) Page 3, the very last item under Town Manager Report which reads 'Sussex County has replaced the generator on Cannon Street in order to provide better service'. Add 'The generator is for the sewer sanitary pumping station'.
- 2) Page 4 under Charter & Ordinance
At the end of the Public Participation section, add another sentence at the end of the paragraph:
"This issue on speed was readdressed at this meeting by amendment to the original first reading by Council member Weistling".
- 3) Before the vote to accept the First Reading of Chapter 56 – Boating, add the following sentence:
'There was a motion to approve with Council member Weistling eliminating the reference to miles per hour'.

Mayor Serio asked Council member Weistling to provide the wording to Town Manager Abbot for the corrections to the minutes.

Vote to approve minutes with the noted changes: 7 – 0.

Minutes Approved.

Treasurer's Report:

Council member Bunting presented the Treasurer's Report stating:

- At the end of November, a third of the way through the fiscal year, we have received 75.8% of revenue and spent 28.8%.
- The next budget meeting is scheduled for January 19, 2010 at 9 am. At this time, there will be a review of where we are and address any possible changes.

DISCUSSION

Mayor Serio noted that at the initial budget meeting, there was a decision to meet quarterly for budget reviews.

Council member Carmean stated that at the last council meeting, the auditor report suggested that no more than \$250,000 should be kept in any one account. Currently there are three Realty Transfer accounts that have more than \$250,000. Are we going to adhere to the auditor's recommendation?

Council member Bunting stated that this would be addressed at the next budget meeting and requested the Town Manager provide a recommendation as to where the town can get the best return on its money.

The Treasurer's Report was approved unanimously.

Minutes of the December 11, 2009 Regular Council Meeting

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Town Manager Report: Town Manager Abbott stated:

- Employee Nancy Avery is doing an exceptional job assisting with the finance duties.
- Police employee Sergeant John Devlin did an exceptional job on November 13, 2009 during the peak of that storm by handling numerous phone calls and providing outstanding service as the Public Safety officer.
- Building Official Pat Schuchman has undertaken many large tasks and has done a great deal of work towards services to the residents regarding Flood Zone requirements and the Census.
- On Veteran's Day weekend, our dunes suffered a great deal of damage. There have been numerous inquiries from our citizens about the condition and refurbishing of the beach. A representative of the Department of Natural Resources (DNREC) stopped in the Town Manager's office when they were doing their assessment, but have made no effort to communicate since then. Waiting for an update.
- Public Works employee Charles Smith, Pat Schuchman, our Building Official and the Town Manager met with a representative of Delmarva Power to discuss prevention of tree limbs on electric lines.
- The application submitted to the Delaware Economic Office with the objective of growing business and adding jobs by increasing pedestrian traffic has been approved and more research will be done. We are looking at possibly a boardwalk style sidewalk rather than poured concrete. A sample is available for public viewing. This material would be low maintenance and permeable.
- A second grant to create another park in the town is in the application process.
- The Barefoot Gardner's Club requested banners to be placed on utility poles in town. A response from Delmarva Power as to which poles may be used is needed. The next step will be to request funding from the budget committee.

Department Reports:

Beach Patrol Report – Report is included in council packet.

DISCUSSION

Council member Carmean commented that since there was no response from the State, could we put crossovers to access the beach, since the beach can't be accessed except at the State park or 142nd street in Ocean City.

Town Manager Abbott stated he would talk with the Public Works Department and Delaware Department of Natural Resource and Environment (DNREC) to build a crossover.

Mayor Serio said tee-shirts will be sold at the Fenwick Freeze.

Council member Smallwood added that people on the beach committee will be in Town Hall for registration for the Freeze – probably on the 29th and 30th of December.

Building Report - Building Official Schuchman noted that three permits for solar panels have been issued. One is commercial and two are residential.

Public Works Report – Report is included in council packet.

Police Report – Report is included in council packet. Sergeant Devlin reminded everyone to lock their doors and keep things out of sight. He stated that Fenwick Island doesn't have many thefts, but with the economy, thefts are on the rise. He noted that a flyer with tips is attached to the public information packet.

DISCUSSION

Town Manager Abbot reported that two solar powered radar signs have been approved: one facing southbound traffic at James and Indian Streets and one facing northbound traffic at Atlantic and Bayard Streets.

Council member Carmean asked if the three criminal arrests listed on the report have anything to do with the arrest of the persons that broke into homes on Bunting Avenue.

Minutes of the December 11, 2009 Regular Council Meeting

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Sergeant Devlin responded that two persons are in jail and there is an on going investigation.

Council member Weistling asked the status of the new vehicle.

Town Manager Abbott replied it is expected soon – within the next 2-3 weeks.

Committee Reports:

Environmental Committee – Chairman Buzz Henifin stated there is nothing to report.

DISCUSSION

Council member Carmean:

- Recognized past and present members of the committee, Harry Haon and Martha Keller. Mr. Haon and Ms. Keller were honored in the Inland Bays Journal published by the Delaware Center for Inland Bays.
- The next meeting is scheduled for February 9, 2010 at 10:30am. There will not be a meeting in January 2010. Harry Haon will speak on his efforts with the Center for Inland Bays.

Planning Commission

Report included in council book.

Charter & Ordinance

Council member Weistling motioned to accept a second reading for proposed changes to Chapter 56 – Boating using the version posted October 26, 2009. He stated that an earlier posted version did not have the two amendments he referenced earlier in the meeting in the minutes from the October council meeting.

Council member Bunting seconded.

DISCUSSION

None

Vote to accept the Second Reading of Chapter 56 – Boating:

Smallwood – yes

Tingle - yes

Carmean - yes

Bunting - yes

Serio - yes

Weistling - yes

Langan - yes

Second Reading passed (7-0)

Council member Weistling stated that the next meeting of Charter & Ordinance will be January 5, 2010.

Old Business:

None

Public Participation:

- Vickie Rymer (8 E. Georgetown St) said she is concerned about the lack of information given to the citizens about break-ins. There have been rumors among the permanent residents. When looking at the police report, it only says that there were criminal arrests, but it gives no idea what kind of crime it is - against persons or property. She stated she came from an area in Washington, where the Washington Post newspaper lists the county and street names where there were arrests, assaults, indecent exposure, motor

Minutes of the December 11, 2009 Regular Council Meeting

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vehicle thefts or break-ins so residents are aware of crimes committed. Why can't we notify the citizens of Fenwick Island about break-ins? We owe taxpayers more information.

Mayor Serio commented that they do the same thing in Florida, but she hasn't seen it done in Sussex County. The Town has to be careful about what is published to not hurt an investigation. It must be done in a particular way. Mayor Serio asked Sergeant Devlin to take this request back to the Police Chief as a concern.

Sergeant Devlin commented that in this instance, the suspects are no longer a threat as they are off the streets. We need to work together for public safety.

Mayor Serio stated that we will find the best way to let citizens know when there is a problem..

- Ben Waide (2 W. Dagsboro St) commented that the website is a great place for putting information about break-ins, so citizens can be aware. He also stated that the outside sign has too many unnecessary messages such as temperature, season's greetings, etc. and that he learned about today's council meeting from the website – he never saw it on the sign.

Council member Carmean said that there were rumors around town about the break-ins and it would be helpful to have this information on the website so rumors don't build.

- Buzz Henifin (48 W. Farmington) stated the Town should be careful using the material displayed for a boardwalk because it expands. He thanked the Town Manager for the information in the audience packets.
- Janet Hess (24 W. Farmington) stated the tree lighting ceremony was very nice and she would like to see it advertised more next year. Perhaps the town could invite people to decorate and provide refreshments.
- Lynn Andrews (1205 N. Schulz) said there is sign pollution in town. Now there is a new sign stating "divided highway ahead".

Mayor Serio replied that Ms. Andrews will need to call the state. The town has nothing to do with signs on Coastal Highway.

President's Report:

Mayor Serio reported:

- The tree lighting with the choir was very nice.
- She and Council member Smallwood met with Sussex County about guarding the south end of the beach. A letter has been sent to Governor Markel with statistics that the Town Manager compiled. We are planning to meet with the Delaware Department of Natural Resources and Environment (DNREC) and the county and legislature to get funding. We are presenting as strong a case as we can and have stated that if we don't receive funding, the beach won't be guarded.
- Mayor Serio reviewed the upcoming meetings and closings of Town Hall:
 - December 24 & 25 Christmas Holiday – Town Hall Closed
 - January 1 Fenwick Freeze @ 10:30 AM Bayard Street
 - January 1 New Year's Day – Town Hall Closed
 - January 12 Cultural & Historic Preservation Sub-committee and Planning Commission 1:30 and 2:30 PM respectively
 - January 18 Martin Luther King Holiday – Town Hall Closed
 - January 22 regular council meeting @ 3:30 PM – Mayor Serio stated that she would double check on this date for the January council meeting – it might be the 29th rather than the 22nd.

Minutes of the December 11, 2009 Regular Council Meeting

DRAFT

Councilmember Weistling stated that long time resident and member of the Board of Adjustment, Roger Scherff, passed away.

Mayor Serio adjourned the meeting at 4:15 pm.

Respectfully submitted,

Nancy Avery, Administrative Assistant for
Diane Tingle, Secretary

TOWN OF FENWICK ISLAND
OPERATING BUDGET
AUG 1, 2009 - DEC 31, 2009 YTD

REVENUES
43000-Taxes

| | December | Budget | % Budget | Last Year | EXPENDITURES | | | | December | Budget | % Budget | Last Year | December |
|------------------------------------|-----------|-----------|----------|-----------|-------------------------------|--|--|--|----------|---------|----------|-----------|-------------------------|
| | | | | | | | | | | | | | |
| Rental Tax | 214,025 | 275,000 | 77.83% | 229,002 | 61100 Police Department | | | | 153,591 | 389,682 | 39.41% | 174,509 | Administration |
| Property Tax | 619,544 | 625,000 | 99.13% | 620,170 | Payroll-related exp | | | | 5990 | 19,000 | 31.53% | 7,466 | Payroll-related exp |
| | | | | | Veh maint, gas & oil | | | | 1041 | 5,000 | 20.82% | 1,524 | Prof. Serv (finance) |
| | | | | | Computer & air time | | | | 595 | 3,000 | 19.83% | 849 | Office equip & supply |
| 44550-Charges for Services - Admin | 56,752 | 82,500 | 68.79% | 48,937 | Training | | | | 2350 | 5,000 | 47.00% | 4,612 | Training & Travel exp |
| Business Licenses | 177,910 | 178,160 | 99.86% | 123,073 | Uniform, Equip maint | | | | 894 | 7,000 | 12.77% | 517 | Vehicle, Fuel & Maint |
| Garbage & Recycling | 8967 | 28,000 | 32.03% | 10,337 | Office Supplies, Print | | | | 2407 | 3,000 | 80.23% | 552 | Print, Park Permit exp. |
| Comcast franchise fee | 26,697 | 27,120 | 98.44% | 29,799 | Hurricane Readiness | | | | 166,868 | 431,682 | 38.66% | 190,029 | Sub-total |
| Ambulance Service | 69,968 | 75,000 | 93.29% | 5,157 | Sub-total | | | | | | | | |
| Bldg Permit Fees | | | | | | | | | | | | | |
| | | | | | 61500 Lifeguards | | | | | | | | |
| 44800-Fines & Forfeitures | | | | | Payroll-related exp | | | | 72,742 | 179,750 | 40.47% | 74,162 | General Government |
| Penalties | 425 | 3,000 | 14.17% | 1,820 | Uniform, Supplies, etc | | | | 60 | 7,500 | 0.80% | 1,720 | Trash & Recyc Exp |
| Traffic and Parking Fines | 18309 | 55,000 | 33.29% | 25,398 | Training & Certification | | | | 0 | 1,400 | 0.00% | 102 | Insurance |
| | | | | | Misc. & Junior Guards | | | | 308 | 900 | 34.22% | 204 | Ambulance Service |
| 45000- Investments | | | | | Gasoline | | | | 94 | 200 | 47.00% | 145 | Pro Serv (Legal, Audit) |
| Inv. Income | 4356 | 9,000 | 48.40% | 5,646 | Sub-total | | | | 73,204 | 189,750 | 38.58% | 76,333 | Utility Expense |
| | | | | | | | | | | | | | Telephone & website |
| 46430- Misc. Revenue | | | | | 61800 Public Works Department | | | | | | | | Other prof. Services |
| Parking Perm. | 5945 | 25,000 | 23.78% | 3,325 | Payroll-related exp | | | | 91,516 | 225,457 | 40.59% | 95,482 | Postage & Printing |
| Bonfire Permits | 520 | 2,500 | 20.80% | 820 | Building maint Utilities | | | | 1540 | 5,600 | 27.50% | 1,600 | Building Maintenance |
| Town Hall rent | 300 | 2,000 | 15.00% | 910 | Gas & Oil | | | | 980 | 4,000 | 24.50% | 1,643 | Gov & Comm Relations |
| Misc Income & copy fees | 7248 | 5,100 | 142.12% | 406 | Equip, Repairs & Maint | | | | 650 | 4,500 | 14.44% | 1,350 | Codification |
| Insur. Reimb | 7976 | 5000 | 159.52% | 7,538 | Training & Safety Equip | | | | 268 | 2,000 | 13.40% | 345 | Employee Relations |
| Beach concession | 0 | 20,000 | 0.00% | | Uniforms, Shop & Misc | | | | 743 | 2,450 | 30.33% | 709 | Contingency Reserve |
| Misc - Jr. lifeguard | 0 | 2,500 | 0.00% | | CDL License Test | | | | 297 | 500 | 59.40% | 335 | Emerg Mgmt. & misc. |
| Misc. Revenue Police | 250 | 7,200 | 3.47% | 3,845 | Sub-total | | | | 95,994 | 244,507 | 39.26% | 101,464 | Sub-total |
| Sale of Equipment | 15,010 | | | 1,500 | | | | | | | | | |
| Carry-over from prior year | 0 | | | | | | | | | | | | |
| Grant Revenue | 41,974 | 59,500 | 70.54% | 43,000 | | | | | | | | | |
| Total Revenues | 1,276,176 | 1,486,580 | 85.85% | 1,160,683 | | | | | | | | | |

Total Expenses

606,668

TOWN OF FENWICK ISLAND
MONTHLY RECONCILIATION OF ACCOUNTS
PERIOD ENDING DECEMBER 31, 2009

| Company | Account | Beginning Balance | Ending Balance |
|------------------------|------------------------------|--------------------------|-----------------------|
| Town of Fenwick Island | | 1,068,685.17 | 980,514.35 |
| | General Fund Checking | 41,322.26 | 27,292.09 |
| | General Fund Savings | 695,551.19 | 614,550.65 |
| | General Fund Savings DELGIP | 330,866.65 | 330,882.06 |
| | Payroll Fund | 745.07 | 7,589.55 |
| | Petty Cash | 200.00 | 200.00 |
| Municipal Street Aid | | 3,457.64 | 2,344.12 |
| | Checking | 217.30 | 170.80 |
| | Savings | 3,240.34 | 2,173.32 |
| Law Enforcement Grants | | 3,108.12 | 3,108.14 |
| | SALLE (State Aid to Local) | 3.28 | 3.28 |
| | EDIE (Drug Enforcement) | 2,948.64 | 2,948.64 |
| | SLEAF | 30.00 | 30.00 |
| | Criminal Justice Block Grant | 126.20 | 126.22 |
| Reserve Accounts | | | |
| Parks & Recreation | | 2,550.03 | 2,519.08 |
| Beach Replenishment | | 35,360.56 | 35,364.09 |
| Compensated Absence | | 18,549.71 | 18,549.71 |
| Realty Transfer Funds | | 1,681,506.61 | 1,716,477.69 |
| | Wilmington Trust Reserve | 315,384.36 | 315,399.06 |
| | Wilmington Trust Non-Reserve | 567,900.87 | 567,927.32 |
| | PNC Realty transfer | 94,345.98 | 127,850.99 |
| | PNC 13 month CD | 176,087.18 | 177,256.73 |
| | Sussex County FCU CD | 349,321.20 | 349,321.20 |
| | Edward Jones | 10,042.47 | 10,297.84 |
| | Flushing Savings CD | 84,710.15 | 84,710.15 |
| | Discover Bank CD | 83,714.40 | 83,714.40 |

**TOWN OF FENWICK ISLAND
BUILDING REPORT
NOVEMBER/DECEMBER 2009**

| PERMIT # | PROPERTY DESCRIPTION | PROJECT DESCRIPTION | E.C.C. | TOTAL |
|----------|--|---|---------------------|-------------------|
| 3823 | Fadden Construction N. Hanagan 709 Schulz Road Lot 7 1-34 23.16 340.00 | Re-shingle roof | \$17,000.00 | \$510.00 |
| 3824 | Anthony & Sylvan Pools J. McCoy 12 W. Houston St. Lot 153 1-34 23.12 119.00 | 16'x40' swimming pool | \$37,000.00 | \$1,110.00 |
| 3825 | Tiger Roofing Inc. K. Broadwater 10 W. Indian Street Lot 125 1-34 23.12 141.00 | Re-shingle roof | \$4,535.00 | \$154.95 |
| 3826 | Chieffo Electric Inc. N. Pernick 1500 Bay Street Lot 115 1-34 23.12 145.00 | Install (24) 142-watt solar panels & (14) 72-watt solar panels | \$26,500.00 | \$100.00 |
| 3827 | J. Balsamo 1100 Coastal Hwy. Lots 50,51,52 1-34 23.12 67.00 | Remodel store interior by constructing dressing rooms & window display counter | \$2,000.00 | \$60.00 |
| 3828 | J. Steele Roofing Seaside Country Store 1208 Coastal Hwy. Lot 96 1-34 23.12 12.00 | Re-shingle roof | \$4,800.00 | \$144.00 |
| 3829 | Flexera, Inc. JWM Enterprises 1406 Coastal Highway Lots 71,72,73,130,131 1-34 23.12 137.00 | Install photovoltaic solar system using Unirac Solar Mount System & Solar Dock System | \$102,648.00 | \$100.00 |
| 3830 | Marnie Properties, Inc L. Kulin 40 W. Farmington St. Ext. Lots 530/531 1-34 23.12 28.00 | Demolish house | \$7,500.00 | \$225.00 |
| 3831 | Double Diamond Bldrs. F. Berry 56 Bayside Drive Lot 198 1-34 23.20 8.00 | Replace 3 windows & exterior deck repair | \$3,000.00 | \$90.00 |
| 3832 | J. Costello 36 Madison Avenue Lot 214 1-34 23.16 214.00 | Replace existing kitchen cabinets | \$14,923.00 | \$447.69 |
| | | | | |
| | | TOTAL | \$219,906.00 | \$2,941.64 |

PUBLIC WORKS DEPARTMENT REPORT
November 30, 2009 to January 13, 2010

The following activities have been performed by the Public Works Department for this time period.

- Drainage, shoulder, sign, and post work was performed throughout this time frame.
- Routine maintenance of buildings, equipment, park, grounds, right of way, and median was performed during this time frame.
- Cut and trim grass in right of way and park where and when needed.
- Street clean ups after heavy weather events.
- Repairing lifeguard stands
- Repair two wood beach signs
- Help put up holiday decorations inside town hall.
- Set up for holiday celebration
- Charlie attended 10 hour OSHA basic safety workshop
- Repairs to holiday lights highway, town hall, and park after bad weather events
- Fill in potholes in beach ends
- Clean off W. Georgetown point after flooding.
- Clean tiger lily's off of median islands, trim bushes, fertilize trees, and pick up trash in median.
- Install memorial bulbs on memorial tree.
- Assist generator mechanic with town generator checks and service
- Safety meeting 12-17-09 hard hats and general truck safety.
- Build water tank holding frame.
- Repair and lube rollers on public works building garage doors.

- Take down holiday lights around town hall, park, and store for next year.
- Help take down holiday decorations inside town hall and store for next year.
- Build shelf unit 3rd bay public works building.
- Order and obtain one brick for park.
- Take down holiday lights on Coastal Highway, wash, hang to dry, and start maintenance on them.
- Start maintenance on lawn mowers.
- Safety meeting 1-11-10 eye protection and general truck safety.

Respectfully submitted,
Wilmer E. Abbott IV
Town Manager

FENWICK ISLAND POLICE DEPARTMENT

MEMORANDUM

TO: PRESIDENT
COUNCIL MEMBERS
CITIZENS

FROM: Chief William Boyden

DATE: January 12, 2010

SUBJECT: DECEMBER MONTHLY REPORT

Here is the December monthly report for your review and approval:

| | 2009 | 2008 |
|----------------------------|------|------|
| Traffic Arrests/Citations | 106 | 80 |
| Total Number of Complaints | 35 | 15 |
| DUI Arrests | 2 | 0 |
| Criminal Arrests | 2 | 0 |
| Parking Tickets | 2 | 7 |

TO: Fenwick Island Town Council
FROM: Winnie Lewis, Chair , Planning Commission

- The Cultural and Historic Preservation Sub-committee met on January 12, 2010. Oral History Project activities will continue. Focus this year on commercial community – folks who owned businesses and/or worked at local businesses. Next meeting February 9, 2010 @1:30. Will meet with businesses and discuss possible activity(s) for 2010.
- The Planning Commission met on January 12, 2010. Members finalized the Work Plan for 2009-2010. Next meeting February 9, 2010 @ 2:30PM.

Respectfully Submitted,

Winnie Lewis
WL/adip

Chapter 95, HAZARDOUS MATERIALS

EXISTING:

§ 95-1. Definitions.

A. For use herein, this chapter adopts the definitions of "hazardous material," "hazardous substance" and "hazardous waste" as used by the United States Department of Transportation as more fully set forth in CFR 171.8. Items included within the definition of "hazardous material," "hazardous substance" and "hazardous waste" are listed in the Hazardous Material Table and CERCLA List as defined by the United States Department of Transportation and found in 49 CFR 172.101.

B. As used herein, "hazardous material" includes hazardous material, hazardous substance and hazardous waste.

§ 95-2. Applicable transportation law.

All federal, state and county regulations concerning the transport of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

PROPOSED:

Chapter 95, HAZARDOUS MATERIALS AND STORAGE

§ 95-2. Applicable transportation law.

All federal, state and county regulations concerning the transport and storage of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

Chapter 102 – Lighting

§ 102-1. Purpose.

The purpose of this chapter regulating lighting is as follows:

- A. Permit reasonable uses of outdoor lighting for nighttime safety, utility, security and enjoyment.
- B. Minimize glare and obtrusive outdoor lighting.
- C. Conserve energy.

§ 102-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

FILTERING -- Covering for a lamp or other light source with a glass or acrylic translucent enclosure of the light source.

FULLY SHIELDED—Outdoor light fixtures shielded or constructed so that no direct light rays are emitted by the installed fixture which go beyond the property lines of the lot(s) on which the light source is located and the bulb cannot be seen from any other property.

INDOOR LIGHT—Illumination initiated, created or generated from the interior of a building or structure which is directed, reflected, filtered or otherwise from the interior to the exterior.

INSTALLED—The attachment, or assembly fixed in place, whether or not connected to a power source, of any outdoor light fixture.

LIGHTING FIXTURE -- An assembly of one or more lamps (bulbs), tubes, etc., in a device designed to hold them. The fixture may include a shielding or filtering cover.

OUTDOOR LIGHT FIXTURES -- Illuminating devices, lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to search, spot and flood lights.

PERSON -- Includes firms, companies, corporations, partnerships, associations, or any organizational entity as well as individuals.

SHIELDING -- A device that eliminates direct light rays (from a lamp or other light source) in one or more directions.

§ 102-3. General Provisions.

- A. All outdoor illuminating devices shall be installed in conformance with the provisions of this chapter and the applicable sign regulations.
- B. Lighting, indoor or outdoor, on all properties shall be arranged so as not to reflect or cause glare onto any other property.
- C. For the purpose of this chapter, the following persons shall be presumed to be in custody and control;
 - (1) An individual owner or owners where the premises are owner occupied.
 - (2) The tenant where the premises are leased.
 - (3) A manager or person in charge of the premises.

§ 102-4. Approved materials and methods of construction or installation/operation.

The provisions of this chapter are not intended to prevent the use of any design, material or method of installation or operation not specifically prescribed by this chapter, provided that any such alternative has been approved. The Building Official may approve any such proposed alternative, provided that:

- A. It provides at least approximate equivalence to the applicable specific requirements of this chapter.
- B. It is otherwise satisfactory and complies with the intent of this chapter.
- C. Outdoor light(s) are fully shielded and not higher than 30 feet above ground level if attached to a pole or above the bottom of the roofline if attached to a building.
- D. Outdoor lighting under canopies or overhangs are fully shielded and not higher than 30 feet from ground level.
- E. The highest part of any bulb or light fixture is used in determining whether light(s) meet the height limitations of this chapter.
- F. All exterior light(s) or lighting are to be locked in a fixed position.

§ 102-5. Shielding/Filtering required.

- A. All outdoor lighting fixtures shall have shielding as required by this chapter.
- B. Metal halide fixture lamp types shall be filtered.

§ 102-6. Submission of plans; evidence of compliance with regulations.

- A. Submission contents. The applicant for any permit required by any provision of the laws of this town in connection with proposed work involving outdoor light fixtures shall submit (as part of the application for permit) evidence that the proposed work will comply with this chapter. The submission shall contain but shall not necessarily be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in the laws of this town upon application for the required permit:
 - (1) Plans indicating the location of all exterior lighting on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors and other devices.
 - (2) A description of the illuminating devices, fixtures, lamps, supports, reflectors and other devices, and the description may include, but is not limited to, catalog cuts by manufacturers and drawings (including sections if needed to make the application clear).
 - (3) Photometric data, such as that furnished by manufacturers, or similar material showing the angle of cut off or light emissions.
- B. Additional submission. The plans, descriptions and data required in this section shall be sufficiently complete to enable the Building Official to determine readily whether compliance with the requirements of the Code will be secured. If such plans, descriptions and data cannot enable this determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the applicant shall additionally submit evidence of certified reports of tests showing compliance, provided that these tests shall have been performed and certified by a recognized testing laboratory.
- C. Lamp or fixture substitution. Should any outdoor light fixture be changed after the permit has been issued, a change request must be submitted to the Building Official for his or her approval, together with adequate information to assure compliance with the chapter, which must be received prior to substitution.

§ 102-7. Prohibitions.

- A. Certain fixtures and lamps. The installation or use of any mercury vapor, low-pressure sodium, high-pressure sodium, metal halide, fluorescent, quartz or any incandescent lighting fixture or lamp greater than 160 watts which is not fully shielded as provided in the chapter.
- B. Laser source light.
- C. Searchlights.

§ 102-8. Restrictions on use.

The following apply to lamps (bulbs) with or without shielding or filtering and to lighting fixtures:

- A. Spotlights and floodlights shall be arranged so as not to directly illuminate structures on adjacent or other properties.
- B. Illumination by any device or combination of devices (including those cited in Subsection A above) that is/are located within a structure, attached to a house or other structures or located anywhere on a residential or commercial property shall not produce light intensity at any adjacent property boundary in excess of five (5) footcandles as measured by a light meter or similar device.
- C. Special attention shall be given to exposed light bulbs that are unprotected by filtering covers or shielding or not recessed into porch ceilings or roof overhangs. Such exposed light bulbs may cause glare even if all of the other provisions of this article are observed. If this occurs, corrective action, such as shielding or filtering, shall be taken.

§ 102-9. Temporary exemptions; exceptions.

- A. Request; renewal; information required. Any person may submit a written request, on a form prepared by the town, to the Building Official for a temporary exemption from the requirements of the chapter.
- B. Approval; duration. The Building Official shall have five business days from the date of submission of the request for temporary exemption to act, in writing, on the request. If approved, the exemption shall be valid for not more than 30 days from the date of issuance of the approval. The approval shall be renewable at the discretion of the Building Official upon a consideration of all the circumstances. Each such renewed exemption shall be valid for not more than 30 days.
- C. Disapproval; appeal. If the request for temporary exemption is disapproved, the person making the request may appeal to the Town Council pursuant to § 102-12.
- D. Excepted from this chapter is lighting provided by the Town of Fenwick Island, county or state governments and temporary emergency lighting provided by police, firemen, electric utility companies and other such organizations. When needed, the town may allow individual residents to provide temporary emergency lighting.
- E. Exterior holiday lights are exempt.

§ 102-10 . Other exemptions.

Outdoor lighting fixtures installed prior to and operable on June 21, 1996 shall comply with the requirements of this chapter no later than July 31, 2016.

§102-11. Written notice of violation.

In the event any person shall be found in violation of any section of this chapter, he/she or it shall be given notice in writing, by certified mail, return receipt requested, with copy by the same method to the owner of the property if different from the person given notice. The owner shall correct the violation within 30 days of the mailing of such notice.

§ 102-12 . Appeals.

Any person aggrieved by any decision of the Building Official made in administration of this chapter has the right to appeal to the Town Council, within 15 days of receipt of notice, by giving written notice of his or her election to do so to the office of the Town Manager and upon payment of a fee as set by resolution of the Town Council from time to time; the Town Manager shall notify the Secretary of the Town Council and shall transmit to the Secretary all the papers constituting the record upon which the decision appealed from was taken. Town Council shall set a date, time and place for the hearing of the appeal, which time and date may be at a regular Town Council meeting or a special meeting of the Town Council, so long as the applicable notice and time requirements may be met. Notice of the appeal and scheduling of the appeal before Town Council shall be sent to the appellant at least 15 days prior to the hearing date. In the event of such an appeal, enforcement is stayed until a decision has been reached by Town Council. Any decision made by Town Council is final.

§ 102-13. Violations and penalties.

Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$100 as well as costs of prosecution and any court-imposed assessments. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

§ 102-14. Applicability; severability.

- A. The provisions of this chapter are in addition to, and not in derogation of, the provisions of any other applicable laws governing lighting, including but not limited to the provisions of § 135-2H and I.
- B. The provisions of this chapter are severable. If any section, subsection, sentence, clause or phrase of this chapter or its application to any person or circumstance is held invalid by the decision of any court of competent jurisdiction, the remainder of this chapter is and shall remain in full force and effect.